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**IN THE
COURT OF APPEALS OF INDIANA**

JEROME ROBERTSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 27A04-0605-CR-263

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-0510-FA-160

March 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jerome Robertson appeals the eighteen-month sentence imposed by the trial court upon its finding that Robertson was in contempt of court. Specifically, he argues that the trial court did not have the authority to impose a sentence greater than six months without a jury trial and without a waiver by Robertson of his right thereto. Because Robertson was released from jail after serving approximately four months, the issue Robertson raises is moot, and we dismiss his appeal.

Facts and Procedural History

On October 5, 2005, Donald Weaver fired multiple gunshots at Robertson, striking Robertson once in the chest. The State charged Weaver with attempted murder, unlawful possession of a firearm by a serious violent felon, and being a habitual offender. The trial court scheduled Weaver's trial for April 17, 2006, and Robertson received a subpoena to testify. Robertson failed to appear on the first day of Weaver's trial, and the trial court issued a bench warrant for his arrest. Robertson was arrested and brought to the second day of Weaver's trial.

The trial court held a hearing regarding Robertson outside the presence of the jury. Robertson informed the trial court that he did not want to testify because he "provoked the situation" with Weaver. Tr. p. 4. The trial court informed Robertson that he could be held in contempt, fined, and sentenced to a period of jail time if he refused to testify, but Robertson persisted in his refusal. The State petitioned for, and the trial granted, use immunity for Robertson's testimony. Robertson, acknowledging that he was subjecting himself to a contempt finding, still refused to testify. The trial court found Robertson to

be in contempt and sentenced him to eighteen months in jail. Robertson said that he wished to appeal the trial court's decision, and the trial court found that Robertson was entitled to appointed counsel for that purpose. Weaver's case ended in a mistrial and was set for re-trial on August 21, 2006.

On July 31, 2006, Robertson filed his appellant's brief, asking for the following relief: "The Indiana Court of Appeals should remand this case back to Grant Superior Court I, and Order the Court to Sentence ROBERTSON to a fixed term of incarceration not to exceed Six (6) months." Appellant's Br. p. 14. In support, Robertson cited this Court's opinion in *Holly v. State*, where we noted that "[s]entences exceeding six months may not be imposed absent a jury trial or waiver thereof." 681 N.E.2d 1176, 1177-78 (Ind. Ct. App. 1997) (citing *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966)). It is undisputed that the trial court sentenced Robertson to eighteen months in jail without a jury trial and without Robertson waiving his right thereto.

After filing his brief, Robertson testified at Weaver's re-trial. On August 22, 2006, the trial court entered the following order: "The Court finds that Jerome Robertson has purged himself of contempt and fully served his commitment previously ordered by this Court on April 18, 2006. Jerome Robertson is order released today." Appellee's App. p. 1. As a result, Robertson served just over four months in jail.

On September 5, 2006, the State filed a Motion for Involuntary Dismissal of Appeal, arguing that the issue raised by Robertson on appeal is moot. Specifically, the State contended that because Robertson had already been released from jail, this Court could provide no effective relief. This Court's motions panel denied the State's motion

and granted the State additional time in which to file its appellee's brief. Robertson's appeal, fully briefed, is now before us.

Discussion and Decision

As noted above, Robertson argues on appeal that we should remand this cause to the trial court with instructions to impose a sentence of six months or less because his eighteen-month sentence was imposed without a jury trial and without Robertson waiving his right thereto. The State continues to maintain that this issue is moot in light of Robertson's release from jail on August 22, 2006. We must agree with the State.

As an initial matter, we note that the State asks us to reconsider our motions panel's decision that Robertson's appeal is not moot. While we are reluctant to overrule orders issued by our motions panel, we are not precluded from doing so. *Smith v. Deem*, 834 N.E.2d 1100, 1103 (Ind. Ct. App. 2005), *trans. denied*. We do so in this case.

"Typically, the doctrine of mootness leads courts to decline to address the merits of claims that have otherwise been resolved." *Horseman v. Keller*, 841 N.E.2d 164, 170 (Ind. 2006). "Where there is a matter of great public importance, however, and the possibility of repetition, Indiana courts may choose to adjudicate a claim." *Id.* The public interest exception to the mootness doctrine may be invoked when: (1) the issue involves a question of great public importance; (2) the factual situation precipitating the issue is likely to recur; and (3) the issue arises in a context that will continue to evade review. *Jones v. State*, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*.

Here, Robertson has raised a single issue on appeal: whether the trial court had the authority to impose a sentence greater than six months without a jury trial and without Robertson having waived his right thereto.¹ Because the trial court commuted Robertson's sentence to time served after just four months, this issue is moot. Furthermore, we need not invoke the public interest exception because the answer to Robertson's question is well-established. That is, "[s]entences exceeding six months may not be imposed absent a jury trial or waiver thereof." *Holly*, 681 N.E.2d at 1177-78. The State does not dispute this point. "When moot questions only are presented on appeal, and the decision of the case can have no practical effect, the appeal will be dismissed." *Barton v. Fuller*, 249 Ind. 100, 102, 231 N.E.2d 35, 36 (1967).

Appeal dismissed.

BAILEY, J., and BARNES, J., concur.

¹ In denying the State's motion to dismiss Robertson's appeal, our motions panel relied upon two contempt cases in which this Court rejected mootness arguments, *Jones* and *In re Marriage of Stariha*, 509 N.E.2d 1117 (Ind. Ct. App. 1987). In *Jones*, we rejected a mootness argument where the appellant's 200-day contempt sentence was commuted to time served, 102 days, and the appellant was challenging the reasonableness of the sentence. 847 N.E.2d at 200-01 (concluding that whether a contemnor's sentence is reasonable is a question of significant import that may continue to evade review). In *In re Marriage of Stariha*, we rejected a mootness argument where the appellant was challenging the actual contempt finding due to the potential "collateral consequences" of that finding. 509 N.E.2d at 1122-23. Here, Robertson challenges neither the reasonableness of his sentence nor the actual contempt finding. Therefore, the cases cited by our motions panel are distinguishable from the instant case.